

June 3, 2021

The Honorable Judge Bianco  
U.S. District Court – EDNY  
100 Federal Plaza  
Central Islip, NY 11722

Re: Kenner – Compassionate Release supplement -- 18 U.S.C. 3582(c)(1)(A)

Your Honor:

The instant letter is respectfully submitted as a supplement to Kenner's s.3582 motion (ECF 1006—and rebuttal ECF 1035)—following the prior supplement article from the Washington Post, May 7, 2021 (by Shayna Jacobs), titled (ECF 1049-1):

*"Judge says 'morons' run New York's federal jails, denounces 'inhumane' conditions"*

The prior article featured Chief Judge McMahon's contemptuous opinion of the repeated failures to secure a safe and clean environment for the detainees guaranteed by the Eighth Amendment. Her analysis can only leave one aghast, as she opined, the facilities failed to "*do anything meaningful*". Judge McMahon equated the MCC and MDC facilities in her opinion—and has severely reduced the sentences of individuals before her in recent months.

The accolades continue as conditions worsen

The New York Daily News ("News") wrote another exposé May 24, 2021, referring to the NYC Federal jails incompetency and inhumane conditions:

*"Judge cuts time, Fed jails' rot means inmates get sprung early"*

The News cited Judge Paul Oetken April 2, 2021's sentencing opinion:

*"I do believe that because it's been harsher than a usual period that its more punitive, that its essentially the equivalent of either time and a half or two times what would ordinarily be served" ...continuing*

*"So I think having served 24 months is equivalent to having served three years."*

Ultimately, Judge McMahon was cited by the News, positing:

*"There is no excuse for the conditions in those two institutions"* ...continuing

*"You shouldn't have to suffer for the incompetence of the United States Department of Justice and its subsidiary agency, the Bureau of Prisons."*

Judge McMahon closed her brusque opinions by saying she wished Attorney General Merrick Garland had heard an inmate's description of horrors; while the Justice Department has failed to respond to public inquiries about whether or not Garland even has a plan for corrective measures.

#### COVID vaccine update

As of June 1, it is impossible to gauge if MDC's medical staff have implemented much of a vaccine program—if any. While other BOP facilities nationwide have been fully vaccinated for months by now, the most vulnerable in the BOP system at MDC—and the site of the harshest contamination rates system-wide—*still* have no access to the vaccine. After an 80% infection rate in December 2020-January 2021, common sense would promote that the “other 20%” would be prioritized for vaccination. None have been forthcoming—questioning how, if any, vaccination prioritization decisions are being implemented.

#### Actions taken (attached)

After multiple written sick-call notices delivered to psychology staff (who walk door-to-door once per week to hand out puzzles/mazes as MDC's coping program) and other pill distribution staff, Kenner requested to “SICK CALL” 5-30-2021:

*To: vaccine???????*

*I singed [sic] up for the vaccine about 4-6 months ago and no one ever came to see me to take it. I am BMI 25+ (a.k.a. fat guy). I am old (50+: a CDC higher-risk standard). Please have someone come see me ASAP – so I can be safe...finally!! Thanks – Phil Kenner*

3 days later (6-2-2021), SICK CALL replied:

*We do not accept requests for the COVID vaccine. When it becomes available, they will be offered to the most medically fragile first, and then disseminated to general population as it is available.*

Notwithstanding the comforting language from the medical response team, easing the fears of death and continuing stress during the 23.5 hour per day lockdowns, a reasonable number of detainees have received the vaccination. The confounding issue is that with the “other 20%”, there should be prolific and comprehensive implementation. Yet—the staff has vaccinated a significant number of inmates who:

- (1) Already were infected (defying reasonable implementation strategies to “*the most medically fragile*”);<sup>1</sup>
- (2) Are under 30;
- (3) Are in good-shape (a.k.a. not BMI 25+); and generally
- (4) Are lower-risk than Kenner.

As the Court has been made aware, the harshest of judicial opinions about the abysmal conditions in the NY Federal jails has occurred after Kenner's 10-5-2020 sentencing day (8-months ago). As such, “extraordinary and compelling” reasons for sentence adjustment meet any reasonable benchmark; albeit only a contributing factor when compounding MDC's inability to provide vaccination to “*the most fragile first*”.

Kenner submits that the compounding factors since sentencing—never considered by the Court—are more than “extraordinary and compelling” and the Court should act.

Sincerely,

Phil Kenner, ProSe

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<sup>1</sup> With approximately 1000 detainees at MDC and an 80% infection rate that already ravaged the facility, general deduction would leave 200 detainees in the highest risk category: *absent natural antibodies*. Amongst the fortunate who were not infected—yet—Kenner must be part of the highest risk of the remaining 200 (or so) uninfected detainees. Nevertheless, 6-months after the 24/7 lockdown was implemented December 8, 2020; no vaccine has been made available.

